

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SENTINEL TRUST COMPANY, DANNY)
N. BATES, CLIFTON T. BATES,)
HOWARD H. COCHRAN, BRADLEY S.)
LANCASTER, and GARY L. O'BRIEN,)

Plaintiffs,)

v.)

KEVIN P. LAVENDER, Commissioner)
of the Tennessee Department of)
Financial Institutions,)

Defendant.)

No. 3:04-0836
JUDGE ECHOLS

ORDER


For the reasons explained in the Memorandum entered contemporaneously herewith, the Court rules as follows:

1. Defendant's Motion to Dismiss (Docket Entry No. 12) is hereby GRANTED.

2. Plaintiffs' Motion for a Temporary Restraining Order (Docket Entry No. 3) is hereby DENIED AS MOOT.

3. This case is hereby DISMISSED WITHOUT PREJUDICE.

It is so ORDERED.


ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

This document was entered on
the docket in compliance with
Rule 58 and/or Rule 79(a).

FRCP, on 12/13/04 By 

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MEMORANDUM

Presently pending before the Court are Plaintiffs' Motion for Temporary Restraining Order (Docket Entry No. 3) and Defendant's Motion to Dismiss (Docket Entry No. 12). The parties have responded in opposition to the motions.¹

I. Background

This case is brought under 42 U.S.C. § 1983 by state-chartered Sentinel Trust Company ("Sentinel"), located in Hohenwald, Lewis County, Tennessee, and by Sentinel's former officers, directors, and/or shareholders, Danny N. Bates, Clifton T. Bates, Howard H. Cochran, Bradley S. Lancaster, and Gary O'Brien against Defendant

¹The case was first assigned to the undersigned District Judge on December 2, 2004. At Plaintiffs' request, the Court held an expedited hearing on the pending motions on December 9, 2004.

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Kevin P. Lavender, Commissioner of the State of Tennessee Department of Financial Institutions, in his official capacity, claiming deprivation of property without due process of law.² Specifically, Plaintiffs challenge two primary decisions made by the Defendant, as well as all actions of the Defendant taken in accordance with those decisions: (1) on May 18, 2004, to take emergency possession of Sentinel and place it in receivership, pursuant to Tenn. Code Ann. § 45-1-124, § 45-2-1502(c)(1); and (2) on June 18, 2004, to proceed to liquidate Sentinel, pursuant to Tenn. Code Ann. § 45-1-124, § 45-2-1502(c)(2) and § 45-2-1504.

Plaintiffs contend that, in seizing possession of Sentinel and proceeding to liquidate the company, the Defendant has exceeded the scope of the powers granted to him by the Tennessee Legislature and that, if the Defendant is permitted to proceed without intervention by this Court, the Defendant's decisions and actions ultimately will deprive the Plaintiffs of their property without due process of law. Plaintiffs seek a Temporary Restraining Order to enjoin the Defendant from carrying out the terms of a November 15, 2004 Order entered by the Lewis County Chancery Court, which granted permission to the Defendant and the Receiver appointed by the

²Plaintiffs filed this action on September 16, 2004. On October 18, 2004, Plaintiffs amended their Complaint once as a matter of right under Federal Rule of Civil Procedure 15(a). Defendant then filed a Motion to Dismiss on November 1, 2004. Plaintiffs filed a Second Amended Complaint on December 1, 2004, without leave of Court or apparent consent of the Defendant, as required by Rule 15(a).

Defendant to transfer to successor fiduciaries, no later than December 15, 2004, the fiduciary positions formerly held by Sentinel on all non-defaulted bond issues, after which time the Defendant and the Receiver will not retain any fiduciary positions in relation to bond issues covered by the November 15, 2004 Order. Plaintiffs claim that, if this Court does not enter a Temporary Restraining Order in Plaintiffs' favor, then the Defendant and the Receiver will complete the transfer of the fiduciary positions by the target date. In doing so, the Defendant and the Receiver will essentially complete the liquidation process, and Sentinel will be effectively destroyed.

If Plaintiffs succeed in obtaining a Temporary Restraining Order from this Court, they indicate they will then seek a permanent injunction that will: (1) restrain the Defendant from taking any further steps to carry out the liquidation of Sentinel, including the sale of fiduciary accounts or other properties; (2) restore Sentinel to the control of its Board of Directors; (3) require the Defendant, individually and through the Receiver, to make a full accounting to Sentinel and its Board of Directors as to the use of all Sentinel funds during the period of the receivership; and (4) grant such other relief as the Court deems warranted.

Defendant has filed a Motion to Dismiss this action on the ground that the Court lacks subject matter jurisdiction to grant

Plaintiffs any relief. Defendant contends that, in accordance with state statutes, the Plaintiffs filed suit against the Defendant in Davidson County Chancery Court to challenge the legality of the Defendant's decisions and actions concerning Sentinel, that Plaintiffs raised in that state proceeding the precise legal claims they raise in this action, and that the Davidson County Chancery Court entered its written decision rejecting Plaintiffs' legal analysis and holding that the Defendant acted within his statutory powers in taking possession of Sentinel and proceeding to liquidate Sentinel. While the Tennessee Court of Appeals declined Plaintiffs' request to undertake an immediate review of that decision pending further proceedings on Plaintiffs' claims in the Davidson County Chancery Court, the potential for appellate review nonetheless remains open to the Plaintiffs at the final conclusion of that state case.

This federal court, Defendant maintains, does not possess any authority to review judgments entered by Tennessee state courts because that power is reserved to the Tennessee appellate courts and the United States Supreme Court. Further, Defendant contends, under controlling United States Supreme Court precedent, this Court must abstain from interfering in the ongoing state court proceedings, both in Davidson County and in Lewis County, with regard to Sentinel's liquidation.

II. FACTS AND PROCEDURAL HISTORY

To resolve the issues presented for decision, the Court will rely on the written factual record submitted by the parties. At the expedited hearing on the motions, the parties declined to present additional evidence.

On November 20, 1975, Sentinel was chartered under the Tennessee General Corporation Act to engage in general trust company business. By law, Sentinel was not subject to the provisions of the Tennessee Banking Act or to regulation by the Tennessee Commissioner of Financial Institutions at the time of its charter. Sentinel operated for more than twenty years at various offices in Nashville, Tennessee.

Effective July 1, 1999, the General Assembly amended the Tennessee Banking Act to extend application of the banking statutes to trust companies, including those, like Sentinel, that had been chartered before 1980. Tenn. Code Ann. § 45-1-124 (2000). Specifically, the legislature provided in the amended statute that, "[u]nless the commissioner determines otherwise, the provisions of chapters 1 and 2 of this title, and the rules thereof, shall also apply to the operation and regulation of state trust companies and banks whose purposes and powers are limited to fiduciary purposes and powers." Tenn. Code Ann. § 45-1-124(b). The amendment further provided that the Commissioner could allow trust companies a period of up to three years from July 1, 1999, to establish full

compliance with Chapters 1 and 2 of the Tennessee Banking Act and the regulations promulgated thereunder. Tenn. Code Ann. § 45-1-124(h). Also, the Commissioner was given authority to conduct examinations of any trust company at the company's expense and to apply the requirements of Chapter 1 and 2 to trust companies. Id.

After these amendments took effect, state examiners conducted an initial visitation at Sentinel on October 22, 1999. The examiners identified certain violations of the Tennessee Banking Act, which they discussed with Sentinel's President, Danny Bates. Thereafter, state examiners conducted three full-scope examinations of Sentinel in the years 2000, 2001, and 2002. At each of these, state examiners identified particular shortcomings that were discussed with Sentinel's Officers and Directors. While Sentinel improved over time in certain areas of its operations that examiners had criticized, its performance declined in other areas, to the consternation of the state examiners. Of particular concern to the examiners were the number of bond issues held by Sentinel as fiduciary that were in overdraft status and Sentinel's commingling bond and corporate funds. It was during this period that Sentinel built a new building and moved all of its operations to Hohenwald, Lewis County, Tennessee.

The fourth full-scope examination commenced June 13, 2003. Additional concerns arose during the examination. By September 2003, the examiners notified the Assistant Commissioner of the

Department of Financial Institutions that Sentinel was believed to have a significant fiduciary shortfall. As a result of this report, the examination was interrupted to allow completion of Sentinel's 2002 audit.

On October 6, 2003, the Defendant met personally with Sentinel's Board of Directors to discuss issues and concerns relating to the examination. During this meeting, President Bates admitted that Sentinel used commingled funds from various bond issues to pay the expenses on other non-related defaulted bond issues.³ At this meeting, the financial condition of the company was discussed. The Defendant reminded the Directors that Sentinel was in violation of state statute and department regulation in that its 2002 audit had not been conducted. Further, the Defendant expressed concern that one auditor Sentinel had hired to conduct the 2002 audit had resigned and Sentinel appeared to be taking an undue period of time to hire a replacement auditor.

Continuing efforts were made by Sentinel to obtain an audit and by the examiners to reconcile Sentinel's books through late

³Tenn. Code Ann. § 45-2-1003(1) provides in part that a "trust company holding any asset as a fiduciary . . . shall segregate all such assets from any other assets . . . except as may be expressly provided otherwise by law or by the instrument creating the fiduciary relationship and any such asset may be kept by such bank or trust company." Subsections (2) and (3) of the statute provide that a trust company also must maintain segregated fiduciary accounts, unless the trust company can meet an exception for holding assets by class in bulk and complies with applicable regulations for holding the assets in such a manner.

2003 and into 2004. The examiners were hampered by Sentinel's use of two different accounting systems which were not reconciled to each other or to bank statements. Ultimately, in light of several significant concerns, Sentinel's auditor would not express an opinion on the financial statement of Sentinel as of December 31, 2002.

In light of this, state examiners conducted further visitations at Sentinel in March and April 2004. Based upon records Sentinel provided, examiners believed that a significant net fiduciary cash shortage existed that Sentinel could not explain.

In early April 2004, the Defendant sent Sentinel a letter requesting an attorney opinion justifying the legal basis for Sentinel's practice of "borrowing" funds generated by one bond issue to pay the expenses of another. In mid-April Sentinel's bank letter of credit for insurance purposes expired. On April 20, 2004, Sentinel's attorneys refused to give the opinion letter the Defendant had requested.

Sentinel's Executive Vice President and two attorneys representing Sentinel then asked to meet with the Defendant and his staff on April 28, 2004. Sentinel requested permission to continue using funds from the commingled fiduciary cash account to meet immediate cash needs on bond issues. Sentinel also asked to transfer fiduciary positions on two bond issues to successor

trustees. The Defendant denied both requests. However, Defendant stated he wanted to meet with the Board on Friday, April 30, 2004, and would be requesting an immediate capital injection.

On April 30, the Defendant and his staff met with Sentinel's full Board of Directors. During that meeting, President Bates admitted that Sentinel then had a fiduciary cash shortfall of \$7.25 million. The Defendant responded that he would issue an Emergency Cease and Desist Order on Monday, May 3, 2003, requiring an infusion of \$2 million in capital as a showing of the Board's good faith and commitment to operation of the company. The Defendant also indicated that he and his staff would work with Sentinel's Board of Directors to allow it to eliminate the cash deficit over time under an approved capital plan, if the Directors would make the required infusion of capital.

Late on the afternoon of May 3, 2004, Sentinel's management submitted a capital plan to the Defendant, but then immediately withdrew it on advice of counsel. That evening, at 5:50 p.m., the Defendant issued an Emergency Cease and Desist Order, copies of which were hand-delivered to Sentinel's counsel and sent by overnight courier to Sentinel's Board of Directors.

The Emergency Cease and Desist Order included four charges stating that Sentinel was operating in an unsafe and unsound manner: (1) by using pooled fiduciary funds to provide operating capital for non-related defaulted bond issues, which created a

fiduciary cash shortfall that changed on a daily basis and greatly exceeded Sentinel's then-current operating capital; (2) by operating with an inadequate level of capital for the kind and quality of accounts held under administration; (3) by failing to reconcile fiduciary cash and corporate cash accounts in a timely and accurate fashion; and (4) by failing to keep accurate books and records. The Order directed Sentinel, its Directors, officers, employees, agents, successors and assigns to cease and desist from engaging in numerous delineated acts with regard to operations, and further ordered them, among other things, to make an initial capital infusion of \$2 million in cash by the close of business on May 17, 2004, and to submit a capital plan to completely replenish the fiduciary pooled demand deposit account.

Sentinel then obtained new legal counsel after the attorneys who had been representing Sentinel withdrew from representation when President Bates refused to resign his position with Sentinel. The new attorneys, who have substantial experience in the operation of financial institutions, communicated with the Defendant and members of his staff numerous times in the following days in an attempt to avoid the necessity of placing Sentinel in receivership. On May 17, 2004, the Defendant and his staff met with Sentinel's counsel, who reported that Board members did not have sufficient funds to meet the required capital infusion.

As a result, on May 18, 2004, effective at 10:00 a.m., the Defendant took emergency possession of Sentinel by posting at Sentinel and filing in Lewis County Chancery Court at Hohenwald, Tennessee, a Notice of Possession of Sentinel Trust Company, pursuant to Tenn. Code Ann. § 45-2-1502(b)(1) & (c)(1). Among its provisions, the Defendant's Notice specifically stated:

Any person aggrieved or directly affected by the Commissioner's emergency possession of Sentinel Trust Company may have judicial review in Davidson County Chancery Court by common-law writ of certiorari, as provided in Title 27, Chapter 9, of Tennessee Code Annotated.

The Defendant also entered an Order appointing Jeanne Barnes Bryant/Receivership Management, Inc., to serve as Receiver under Tenn. Code Ann. § 45-2-1502(b)(2).⁴

Sentinel again obtained new counsel. On June 2, 2004, Sentinel and its Board of Directors filed with Defendant their "Respondents' Special Appearance, Statement of Special Defenses, and Answer to Notice of Charges." Sentinel and its Directors emphatically contended that the Defendant lacked any power or

⁴Tenn. Code Ann. § 45-2-1502(c)(1) expressly permits the Commissioner to take emergency possession of a state bank without a prior hearing if, "in the opinion of the commissioner, an emergency exists which will result in serious losses to the depositors[.]" The statute further provides that "[a]ny person aggrieved and directly affected by this action of the commissioner may have a review by certiorari as provided in title 27, chapter 9[,]" which is Tennessee's statutory mechanism for obtaining state court review of the decisions of state boards and commissions, through appeal to the Tennessee Court of Appeals. This statute, located in Chapter 2 of the Tennessee Banking Act, applies to trust companies by operation of Tenn. Code Ann. § 45-1-124.

jurisdiction under the Tennessee Banking Act to take emergency possession of Sentinel, a trust company. Without waiving this position, Sentinel responded directly to each charge the Defendant had made in the Notice of Possession and demanded "every hearing and other procedural safeguard" to which it was entitled.

The next day, June 3, 2004, having received Sentinel's demand for a hearing, the Defendant filed a request for an assignment of an Administrative Law Judge to hear the contested case. On June 16, 2004, the assigned Administrative Law Judge contacted counsel for the parties by letter, in which he set forth pre-hearing procedures to be followed and then stated: "When you are ready to set a hearing date, please call me so we can pick a mutually acceptable time." According to the record before the Court, Plaintiffs did not, at any time, ask the Administrative Law Judge to set a hearing date, and Plaintiffs did not state otherwise at the hearing before this Court.

On June 17, 2004, the Defendant, members of his staff, and legal counsel met with Plaintiff Bates and Sentinel's attorney and gave them the opportunity to review a draft report prepared by the state examiners and the Receiver concerning the insolvency of Sentinel. The Defendant permitted Plaintiff Bates and his attorney to take this draft report into a private room to review it for about one hour. The Defendant stated that he wanted the report to

be accurate and asked Plaintiff Bates and his attorney to point out any inaccuracies or any other concerns they might have.

The draft report reflected that, as of December 31, 2003, Sentinel had a shortfall in the pooled fiduciary account of \$5,789,011.00. The report also showed that the shortfall increased over the next four months so that, by May 18, 2004, the deficiency ranged from \$7,612,218.00 in one accounting system used by Sentinel to \$8,430,722.00 in the fiduciary account system. Further, the Receiver had discovered bond principal and interest checks totaling \$861,107.11 in Sentinel's vault that had not been sent to bondholders. The report also showed, based on Sentinel's records, that for the first four and one-half months of 2004, it operated at a net loss of \$197,917.00. Sentinel had total corporate assets of \$1,389,683. Thus, considering the cash deficiency in the pooled fiduciary account, Sentinel was insolvent in an amount of at least \$6,225,445 as of May 18, 2004.

After reviewing the report, Sentinel's attorney pointed out a typographical error in the report and stated he would like to submit written comments the following morning. The attorney made other observations about matters concerning the Receiver's operations. A few changes were made to the report as the result of the meeting, and then the final report was provided to the Defendant. The next morning, June 18, 2004, Sentinel's attorney and Defendant's counsel had several conversations about the

submission of Sentinel's written comments, but ultimately Sentinel did not submit any. It appears that Sentinel did not, at any time, inform the Defendant of any errors noted in the draft report.

Upon consideration of the final report, the Defendant decided that Sentinel should be liquidated. Early on the afternoon of June 18, 2004, Defendant filed a Notice of Liquidation in the Lewis County Chancery Court proceeding, pursuant to Tenn. Code Ann. § 45-2-1502(c)(2).⁵ The Notice stated the reasons why the Defendant had determined liquidation was necessary and indicated the Defendant would proceed to liquidate Sentinel pursuant to Tenn. Code Ann. § 45-2-1504.⁶ The Notice of Liquidation provided that "[a]ny person

⁵This statute provides in part:

If the commissioner determines to liquidate the state bank, the commissioner shall give such notice of such determination to the directors, stockholders, depositors and known creditors. Upon a determination to liquidate, the commissioner may, with ex parte approval of the court in which the notice of possession was filed, sell all or any part of the state bank's assets to another state or national bank or to the Federal Deposit Insurance Corporation.

This statute applies to state trust companies by operation of Tenn. Code Ann. § 45-1-124.

⁶This statute identifies acts in liquidation for which the Commissioner must seek approval of the court in which the Notice of Possession was filed. Particularly, the statute provides in part:

(c) As soon after the commencement of liquidation as is practicable, the commissioner shall take the necessary steps to terminate all fiduciary positions held by the state bank and take such action as may be necessary to surrender all property held by the bank as a fiduciary and to settle its fiduciary accounts. Such fiduciary

aggrieved or directly affected by the Commissioner's determination to liquidate Sentinel Trust Company may have judicial review in Davidson County Chancery Court by common-law writ of certiorari, as provided in Title 27, Chapter 9 of Tennessee Code Annotated, pursuant to Tenn. Code Ann. § 45-1-108(a)." Since June 18, the Defendant and the Receiver have proceeded to liquidate Sentinel, and they have made filings with the Lewis County Chancery Court seeking permission to take certain actions with regard to that liquidation.

On June 29, 2004, Plaintiffs filed a Petition for Writ of Supersedeas and for Common-Law Writ of Certiorari with the Davidson County Chancery Court. Plaintiffs raised the legal claim that the Defendant lacked statutory authority to exercise any of his bank regulatory powers against a trust company. Plaintiffs asserted that the Defendant only has general power to enforce applicable laws against trust companies, including statutes applicable by their terms to trust companies and statutes in the Tennessee Banking Act concerning fiduciary functions which, by their explicit terms, are applicable to both trust companies and banks authorized

accounts may be transferred by the commissioner to another qualified corporate fiduciary as determined by the commissioner, and notice of such transfer must be given by registered mail to the parties by the transferee corporate fiduciary.

This statute applies to state trust companies by operation of Tenn. Code Ann. § 45-1-124.

to exercise fiduciary powers, citing Tenn. Code Ann. §§ 45-2-1002 - 1006. Plaintiffs also raised several arguments with respect to the constitutionality of Tenn. Code Ann. § 45-2-1502. On July 16, 2004, Plaintiffs filed a motion for an expedited hearing on their Petition for Writ of Supersedeas.

On July 27, 2004, the Defendant responded to Plaintiffs' petition and filed the administrative record supporting Defendant's decisions to take possession of and liquidate Sentinel. The Defendant contended that he had acted under express statutory authority pursuant to the Legislature's 1999 amendments to Tenn. Code Ann. § 45-1-124. The Defendant also asserted that the statutes permitting him to take possession of Sentinel were constitutional and that a substantial factual basis existed to support the seizure and liquidation of Sentinel. On August 4, 2004, the Defendant filed a supplemental response providing a transcript of the legislative debates, which Defendant claimed clearly showed the General Assembly's understanding and intent that all provisions of the Tennessee Banking Act (Chapters 1 and 2 of Title 45) would apply to state trust companies.

The Davidson County Chancery Court met with counsel and offered to schedule a consolidated hearing within seven to ten days on Plaintiffs' Petition for Writ of Certiorari to address the factual merit of the Defendants' decisions to take possession and liquidation of Sentinel and the Writ of Supersedeas to consider

whether the liquidation proceeding should be stayed. Defendant's counsel stated she thought the Defendant would agree to stop the liquidation until a final hearing, but Plaintiffs' counsel declined to move forward on the Petition for Writ of Certiorari to explore the factual merit of the Defendant's actions. Plaintiffs asked to proceed only on the Writ of Supersedeas asserting their statutory and constitutional arguments that the Defendant acted without authority and that the court should return control of the company to Sentinel and its Directors.

The Davidson County Chancery Court then held a hearing on Plaintiffs' Writ of Supersedeas on August 5, 2004, and issued its written opinion on August 9, 2004. The court stated:

The lawyer for the petitioners has chosen the battleground. He has chosen to not yet enter the factual fray but has chosen the law as his weapon. He insists that the Commissioner has exceeded his statutory authority. He states emphatically that the statutes used by the Commissioner do not apply to trust companies but only apply to banks. The petitioners are wrong.

Whatever ambiguity there might have been prior to 1999 in the application of the banking laws to trust companies, it was eliminated in 1999. In 1999, the General Assembly amended the Act to specifically make trust companies subject to all of its provisions, not just those pertaining to fiduciaries.

(August 9, 2004 Order at 7.) The court then addressed the particular statutes at issue, particularly § 45-2-1502, and rejected Plaintiffs' "novel argument," which is the same argument Plaintiffs raise in this lawsuit, that

because this statute speaks only in terms of a state bank and its depositors and because Sentinel is neither a

state bank nor has any deposits/depositors, this statute does not apply to Sentinel and, therefore, the Commissioner acted illegally or exceeded his authority when he took possession of Sentinel pursuant to this statute.

August 9, 2004 Order at 9.)

Citing Fahey v. Mallonee, 332 U.S. 245 (1947), the state court also rejected Plaintiffs' claim that the Defendant's acts were unconstitutional, reasoning that intrusive statutory schemes governing financial institutions have been upheld against constitutional attack because such institutions traditionally have been very highly regulated by government for obvious reasons. Under Fahey, the court said, a statutory scheme is constitutional if it provides for emergency seizure and/or liquidation of a financial institution and provides for an immediate post-seizure hearing. (Id. at 10.) The court ruled that Tennessee's statutory scheme is constitutional because a post-deprivation hearing is provided for in Tenn. Code Ann. § 45-2-1502(c)(1), and "[t]here is nothing contained in the Constitution of Tennessee or Tennessee case law inconsistent with the above conclusion." (Id. at 10-11.)

On September 16, 2004, Plaintiffs filed this present action, asserting the same legal claims and seeking similar injunctive relief. Although Plaintiffs filed a separate Motion for a Temporary Restraining Order the same day the Complaint was filed, Plaintiffs did not move for a hearing on the motion for an injunction until November 4, 2004. The previously-assigned

District Judge set a hearing date, but then canceled it. Plaintiffs then moved for an expedited hearing, which this Court granted.

II. ANALYSIS

Before the Court may consider the pending Motion for a Temporary Restraining Order, the Court must first determine that it has subject matter jurisdiction. Clearly, in a case raising a federal constitutional claim of deprivation of property without due process of law under 42 U.S.C. § 1983, the Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and § 1343. But recognizing that the Court has original jurisdiction over a particular type of claim does not end the inquiry, for other principles operate to narrow the Court's jurisdiction, especially in cases like this one where the Plaintiffs seek a remedy in both state and federal courts as a result of the actions of the same Defendant and in regard to precisely the same facts.

The Defendant asks the Court to dismiss the suit for lack of subject matter jurisdiction based on the *Rooker-Feldman* doctrine. That doctrine "provides that inferior federal courts lack jurisdiction to review the final judgments of state courts." Hutcherson v. Lauderdale County, 326 F.3d 747, 755 (6th Cir. 2003); Howard v. Whitbeck, 382 F.3d 633, 638-640 (6th Cir. 2004); Patmon v. Michigan Supreme Court, 224 F.3d 504, 508-510 (6th Cir. 2000). The Defendant contends that the Davidson County Chancery Court has

already decided the legal issues Plaintiffs raise in this suit and therefore, the *Rooker-Feldman* doctrine applies to prevent this Court from sitting as a court of appeal to review that state court decision. Because Plaintiffs' claims are inextricably intertwined with the Davidson County proceeding, the Court would be inclined to agree that the *Rooker-Feldman* doctrine applies, except that the August 9, 2004 Order of the Davidson County Chancery Court is not yet a final judgment. Plaintiffs sought interlocutory appellate review in the Tennessee Court of Appeals, but their request was denied in favor of consolidated review at a later date when the proceedings on the Petition for Writ of Certiorari conclude. Because of the lack of a final state court judgment, the Court is not convinced that the *Rooker-Feldman* doctrine applies.

The Defendant also asserts, under Younger v. Harris, 401 U.S. 37 (1971), and subsequent cases extending its ruling to civil cases, that the Court must abstain from involvement in this civil legal dispute between Plaintiffs and the Defendant in the interest of comity between the state and federal courts. The Court must consider (1) whether the underlying proceedings constitute an ongoing state judicial proceeding; (2) whether the proceedings implicate important state interests; and (3) whether there is an adequate opportunity in the state proceedings to raise a constitutional challenge. Tindall v. Wayne County, 269 F.3d 534, 538 (6th Cir. 2001). "Where a review of these considerations

suggests that the state court should properly adjudicate the matter, a federal court should abstain and order the federal complaint dismissed." Id.; Carroll v. City of Mount Clemens, 139 F.3d 1072, 1074 (6th Cir. 1998) (affirming Younger abstention in section 1983 case where state civil enforcement proceeding was pending in state court). See also Robinson v. Criminal Court Clerk, 181 F.3d 103, 1999 WL 282697 at *1 (6th Cir. 1999) (Table) (Younger requires federal court "to abstain from hearing challenges to pending state proceedings where the state's interest is so important that exercising federal jurisdiction would disrupt the comity between federal and state courts."); Millington Homes Investors, Ltd., v. City of Millington, 60 F.3d 828, 1995 WL 394143 at * 3-4 (6th Cir. 1995) (Table). The Sixth Circuit also teaches that, if "a plaintiff can demonstrate extraordinary circumstances such as bad faith, harassment, flagrant unconstitutionality, or another unusual circumstance warranting equitable relief, then a federal court may decline to abstain." Id. These exceptions are narrowly construed. Zalman v. Armstrong, 802 F.2d 199, 205 (6th Cir. 1986). This Court concludes as a matter of law that each of the factors is met in this case, that none of the exceptions applies, and that the Court must abstain.

The Tennessee state courts have been intricately involved in Sentinel's liquidation since May 2004 and those courts will continue to be involved with Sentinel for some period of time into

the future. Because of the state courts' ongoing involvement and because the regulation and supervision of Sentinel is of critical importance to the state government under which the company was chartered, this Court agrees with the Defendant that the Court must defer to the state courts to hear and resolve all claims and abstain from any interference in that ongoing legal process.

The Court has considered carefully Plaintiffs' plea that Sentinel will be effectively destroyed if this Court fails to intercede and the Defendant finalizes the liquidation of Sentinel as planned. But the immediacy of Plaintiffs' plea is undercut by Plaintiffs' own actions in failing time and again to take advantage of opportunities to seek relief before state tribunals. Putting aside for a moment the numerous opportunities the Defendant himself provided to the Plaintiffs to take immediate action to stabilize Sentinel's precarious financial position in the period from April to June 2004 and the offers Defendant made to stay liquidation proceedings to permit a full hearing, Plaintiffs failed to pursue in a timely manner the remedies provided to them by state law.

In response to the charges included in the Defendant's Notice of Possession, the Plaintiffs demanded an immediate contested case hearing, yet did not stand on that demand and press forward when the Defendant set that administrative process in motion. The Davidson County Chancery Court offered to consolidate the hearing on the merits of the Defendant's actions and Plaintiffs' request

for injunctive relief, but Plaintiff elected to proceed only on its legal claims on the Writ of Supersedeas. Similarly, Plaintiffs did not press for injunctive relief from this Court until it became apparent that the Defendant was moving into the final stages of Sentinel's liquidation.

As it appears from the record before the Court, the state courts are rightfully exercising their authority to supervise Sentinel's liquidation as provided by state law. Plaintiffs have available to them adequate state remedies, which is the point addressed in the case Plaintiffs cite, Boyce v. Williams, 389 S.W.2d 272 (Tenn. 1965). The higher appellate courts of Tennessee, and ultimately the United States Supreme Court, will be the final arbiters of the construction and interpretation of the Tennessee banking statutes at issue in this case. This Court should defer to their authority.

Plaintiffs contend that the state court did not apply the ordinary rules of statutory construction in reaching its decision, and that opens the door for this Court to reconsider the matter.⁷

⁷The Defendant noted during oral argument that, with regard to industrial banks, the General Assembly enacted legislation choosing specific, existing statutes to apply to industrial banks, while in this situation, the General Assembly enacted legislation making state trust companies subject to all of the provisions of Chapters 1 and 2 of the Banking Act. Thus, the legislature knew how to choose particular statutes to apply to state trust companies if it had wanted to do so.

Plaintiffs responded that the way to address the problem was through statutory definitions and that, under Madison Loan & Thrift Co. v. Neff, 648 S.W.2d 655 (Tenn. Ct. App. 1983), the Defendant

By reason of comity, this Court is not permitted to revisit the accuracy or thoroughness of the state court's decision; rather, the Tennessee appellate courts will decide whether that decision is correctly reasoned under the applicable principles of statutory construction. In this action, this Court must give the state court's decision the preclusive effect it deserves. See Allen, 449 U.S. at 97-99.

Moreover, Plaintiffs raised in the state court the identical federal constitutional claim they raise in this Court. State and federal courts have concurrent jurisdiction to consider constitutional claims brought under 42 U.S.C. § 1983. Felder v. Casey, 487 U.S. 131, 139 (1988). Because the Davidson County Chancery Court has already ruled on the merits of the constitutional claim, Plaintiffs are barred by the doctrine of collateral estoppel from asking this Court to relitigate the merits

could not exercise authority the statutes did not give him. The Court may not address these arguments, for the state court's decision is entitled to full faith and credit and it stands as it is. Only as an aside, the Court notes that Tenn. Code Ann. § 45-1-103(27) defines a "state trust company" as a "corporation organized . . . under the Banking Act, as compiled in this chapter and chapter 2 of this title, whose purposes and powers are limited to fiduciary purposes and powers, including a trust company previously organized under the laws of this state[.]" Further, the issue in Neff was whether state statutes gave the Commissioner authority to promulgate rules concerning the financial soundness of industrial loan and thrift companies, and the court of appeals held the statutes did not give the Commissioner such power. The same statutes are not at issue in this case.

of that issue. See Allen v. McCurry, 449 U.S. 90, 97-99 (1980).⁸ See also American Nat'l Bank and Trust Co. v. Clark, 586 S.W.2d 825, (Tenn. 1979) (noting where plaintiff elects to proceed on only part of cause of action, judgment entered on that part is res judicata against second suit to recover on the other part, provided the right to recover on all had accrued at the time of the first suit).

IV. CONCLUSION

For all of the reasons stated, the Court concludes that it must abstain from considering and ruling on any of the legal claims Plaintiffs raise in this lawsuit, including the request for temporary injunctive relief. The Court is aware of the Sixth Circuit's admonition in Carroll, 139 F.3d at 1075-1076, that where monetary damages are demanded in a section 1983 suit, a federal court should stay, rather than dismiss, the case pending conclusion of state court proceedings. Plaintiffs here expressly state in the Complaint that the suit is brought against the Defendant in his official capacity only, and that damages are not sought.

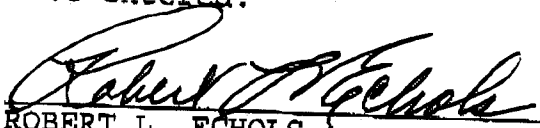
⁸In any event, under Fahey v. Mallonee, 332 U.S. 245 (1947), First Fed. Sav. Bank and Trust v. Ryan, 927 F.2d 1345, 1357-1358 (6th Cir. 1991), and Bingham v. National Credit Union Admin. Bd., 927 F.2d 282, (6th Cir. 1991), the opportunity for a post-deprivation hearing immediately following seizure of a financial institution and/or appointment of a receiver or conservator meets constitutional muster and a pre-deprivation hearing is not required.

Accordingly, dismissal of the suit is appropriate. See Tindall,
269 F.3d at 538.

For all of the reasons stated, Defendant's Motion to Dismiss
shall be GRANTED.

Plaintiffs' Motion for a Temporary Restraining Order shall be
DENIED AS MOOT.

An appropriate Order shall be entered.


ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE